



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MDV-48/51851

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 2, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Polk County Dept. of Social Services in regard to medical assistance, a hearing was held on February 19, 2002, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner is ineligible for medical assistance as a result of a divestment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Represented by:

Leo Beskar, attorney  
219 North Main Street  
PO Box 138  
River Falls, WI 54022

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Sandy Teske, ESS  
Polk County Dept Of Social Services  
300 Polk County Plaza, Suite 1  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Polk County.
2. The petitioner lives in a nursing home and began receiving institutional medical assistance on November 1, 1999.

3. The petitioner inherited \$37,857.14 from her sister on June 13, 2001. Her institutional medical assistance ended on June 30, 2001 because her inheritance placed her over the program's asset limit.
4. On June 28, 2001 the petitioner gave \$2,000 to her church, \$9,000 to her son-in-law, and \$14,000 to her daughter.
5. The petitioner had an operation in September 1998. After her operation her daughter stayed with her and cared for her from October 1998 through January 1999. Her daughter seeks \$14,000 for the care she provided during this period. She arrived at this amount by claiming 16 hours of services a day for 109 days at \$8.00 per hour.
6. The petitioner and her daughter had no written agreement covering payment for the care the petitioner received from her daughter.
7. The petitioner's son-in-law drove frequently to see the petitioner between 1992 and 1998. He contends that \$5,000 of the money the petitioner gave him was to reimburse him for this travel. The total distance of the round trip was 46 miles. He estimates that he made the trip three times a week for six years and traveled a total of 43,056 miles. He believes that he is entitled 25¢ a mile, which would work out to \$10,764, but seeks only the \$5,000.
8. The petitioner's son-in-law submitted no contemporaneous documents showing that he actually made three trips a week for eight years on his mother-in-law's behalf.
9. The petitioner's daughter applied for institutional medical assistance on her mother's behalf on September 6, 2001. The county agency denied that application because it determined that the petitioner divested \$25,000, which made her ineligible for medical assistance for six months.

### **DISCUSSION**

The petitioner lives in a nursing home and had been receiving institutional medical assistance since 1998. On June 13, 2001 she inherited \$37,857.14 from her sister. Because a person cannot have more than \$2,000 in assets and still be eligible for medical assistance, the county agency ended her eligibility effective June 30, 2001. *See* §49.47(4)(b)3g.e., Stats. The petitioner reduced her assets on June 28, 2001 by giving \$2,000 to her church, \$9,000 to her son-in-law, and \$14,000 to her daughter. On September 6, 2000 the petitioner sought to regain her eligibility for institutional medical assistance.

Medical assistance law prevents a recipient from reaching the \$2,000 limit by divesting assets. A divestment occurs when an applicant, or person acting on the applicant's behalf, transfers assets for less than their fair market value during the lookback period. The lookback period is generally 36 months before a person enters an institution. §49.453(1)(f), Wis. Stats. Ineligibility lasts for a period arrived at by dividing the amount divested by the average monthly cost of private nursing home care. §49.453(3), Stats. Nursing home care currently averages \$4,075 per month. *MA Handbook*, Appendix, §14.5.0. In this matter the county agency found that the petitioner divested \$25,000 and was thus ineligible for institutional medical assistance for six months.

The petitioner's daughter and son-in-law contend that \$19,000 of the \$25,000 was not divested because it went toward services they provided to the petitioner. The petitioner's son-in-law contends that from 1992 through 1998 he made trip three times a week and traveled a total of 43,056 miles going back and forth to his mother-in-law's house while doing errands for her and transporting her. He believes that this entitles him to \$5,000, which he points out is less than half of what he would receive if charged 25¢ a mile. His wife believes she is entitled to \$14,000 for round-the-clock care she provided to her mother for 109 straight days after she left the hospital in 1998. She arrives at \$14,000 by charging \$8.00 for 16 hours each day. Like her husband, she points out that she is demanding less than she is actually entitled to because she was responsible for her mother's care 24 hours a day rather than only 16. Neither the

petitioner's daughter nor her son-in-law had a written agreement with the petitioner that provided reimbursement for these services. Nor could the son-in-law document that he actually made three trips a week for the petitioner.

I find that neither the son-in-law's nor the daughter's claim is valid. The son-in-law's claim fails because there is little evidence that he had any concern for payment when he made the trips. It is normal for one to visit a relative. While it is true that the son-in-law's claimed three times a week is more than normal, he has no evidence other than his own recollection of the now fairly distant events that he did so. If the petitioner planned to reimburse him, one would expect at least some of the reimbursement to occur during the period the rides were being provided. His explanation that he and his wife were promised money by the petitioner when she inherited money from her sister is too farfetched to rely upon: When the alleged promise was made the petitioner's sister was alive, and there is no evidence that the petitioner knew how much if anything she would inherit. Furthermore, the alleged promise was made while the petitioner still lived at home. If she lacked the money to pay for the rides when they were given it is likely that any money she received would have to go for her own needs.

The daughter's claim fails even if one accepts that she provided all of the services she said she did. Medical assistance guidelines require that if the total payment to a relative exceeds 10% of the highest possible community spouse asset share, the institutionalized person must have a written, notarized agreement with the relative. *MA Handbook*, Appendix, §14.8.0.3. The highest possible community spouse asset share is \$87,000. *Id.*, §23.4.2. Ten percent of \$87,000 is \$8,700, and the petitioner's payment to her daughter exceeds this amount by \$5,300.

### **CONCLUSIONS OF LAW**

1. The money that the petitioner gave to her son-in-law and daughter on June 28, 2001 for services they allegedly provided to her is a divestment.
2. The petitioner divested a total of \$25,000 when she gave money to her church, her daughter and her son-in-law on June 28, 2001.
3. The petitioner is ineligible for institutional medical assistance for six months as the result of her divestment.

**NOW, THEREFORE, it is** **ORDERED**

That the petition herein be and the same hereby is dismissed.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 7th day of  
March, 2002

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/s Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
41/MDO